United Nations A/HRC/28/NGO/57

General Assembly

Distr.: General
20 February 2015

English only

Human Rights Council
Twenty-eighth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the Amuta for NGO Responsibility, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-03069

1503069

Please recycle

Lack of Military Expertise Seriously Impairs UNHRC Fact-finding

The lack of military expertise and knowledge of international humanitarian law at the Council has greatly marred its reporting on armed conflict, particularly within its fact-finding mechanisms. This problem largely stems from and is compounded by extensive reliance on the claims of NGOs. Few, if any, guidelines exist within the HRC and other UN frameworks to verify and evaluate the credibility of NGO allegations.

The failure to retain experts and develop standards for evaluating NGO evidence has led to the publication of many false claims under the auspices of the Council. The 2009 Goldstone Report on Gaza, for example, is replete with such mistakes and ultimately led to Judge Goldstone's retraction of his own report.[1]

Dozens of similar examples are found in NGO publications on the 2014 Gaza war, and unfortunately, we have reason to expect that they will be adopted by the Schabas Commission. Without such expertise and professional methodology, fact-finding claims regarding IHL violations lack credibility.

Despite their claims to the contrary, NGOs have little to no military experience nor understanding of how armies operate. Although NGOs overwhelmingly focus on damage occurring in war, the authors show no understanding of the circumstances. Some military claims made by NGOs are technically impossible or completely illogical. Even Amnesty's Secretary General Salil Shetty openly acknowledged that the NGO is "not an expert (sic) on military matters. So we don't want to, kind of, pontificate on issues we don't really understand."[2] Yet, despite Amnesty's admitted lack of expertise, this has not stopped the NGO from publishing hundreds of claims relating to military matters, including dozens in its reports on the Gaza fighting.

Like Amnesty, Human Rights Watch also has "little expertise about modern asymmetrical war."[3] Instead of credible evidence and military assessments that reflect knowledge and experience, HRW publications emphasize technical and legal allegations that are unfounded or irrelevant, but present the façade of expertise. These include references to satellite imaging, GPS coordinates, and weapons specifications.

HRW's lack of military expertise has led to fundamental errors in its reporting, and these were then adopted within UN frameworks. For example, in a 2009 publication, HRW accused the IDF of using drones to launch precise weapons during the 2008-09 Gaza war, leading to civilian deaths. HRW claims that these deaths should have been avoided and that IDF drone operators failed to act accordingly. Many of these claims were repeated in the Goldstone report.

Yet, as Robert Hewson, editor of *Jane's Air-Launched Weapons*, commented, "Human Rights Watch makes a lot of claims and assumptions about weapons and drones, all of which is still fairly speculative, because we have so little evidence."[4] Similarly, former Commander of British forces in Afghanistan, Colonel Richard Kemp, in responding to HRW claims that a launch platform could be determined solely by sound, "questioned whether such distinctions could be made, not least as the Spike's range is 8 km (5 miles) -- enough to put helicopters or naval boats out of earshot."[5]

---

[1] Richard Goldstone, "Reconsidering the Goldstone Report on Israel and War Crimes," *Washington Post*, 2 April 2011, *available at* http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html

[2] http://www.aljazeera.com/programmes/talktojazeera/2014/02/salil-shetty-speaking-truth-power-2014271027258 15233.html

[3] http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1317489&ct=8884881

[4] Dan Williams, "Human Rights Watch accuses Israel over Gaza drones," June 30, 2009http://www.reuters.com/article/worldNews/idUSTRE55T37A20090630?feedType=RSS&feedName=worldNews&pageNumber=2&virtualBrandChannel=0&sp=true

[5] Id.

The fundamental errors of Amnesty and HRW are endemic in almost all NGO reporting on armed conflict.

Lack of knowledge regarding IHL is another significant deficiency in NGO reporting that is then incorporated into UN reports by similarly unqualified UN staffers. For instance, NGOs level charges that Israel "deliberately targets civilians" and engages in "indiscriminate attacks." Almost every Israel response to attack is declared by the NGOs to be unlawful. When the evidence so obviously points to a military objective at the target site, the NGOs instead claim the Israeli strike was "disproportionate" or lacking "military necessity", and falsely claim knowledge of the intentions of the military commanders at the time. The NGO reports frequently disregard the more logical explanation for a military action and instead impute, without evidence, malevolent intent.

Thus, NGOs conclude that areas of intense or widespread damage are the result of intentional or disproportionate targeting, rather than considering the more likely explanations that there were large concentrations of targets in one area or that those targets were within civilian structures. Sometimes, the explanation might be as banal as a simple mistake (tragic, but not illegal). As noted by philosopher and ethicist Professor Asa Kasher, the condemning of every single action taken by the IDF as illegal, something no legitimate investigatory body would do, is proof that NGO reports are not credible.[6]

In contrast to NGO narratives, whether an attack complies with the principles of distinction and proportionality requires an assessment of many factors, including information known to military commanders prior to an attack, enemy locations, presence of military objects, presence of civilians, anticipated harm to civilians, the military advantage expected, and evidence of intent to cause civilian harm. In a conflict, these factors must be evaluated prospectively rather than through NGO hindsight.

NGO and UNHRC reports also omit reference to the IDF's extensive system used to evaluate whether a given target is lawful, including embedding legal advisors within each division. These advisors are also available to provide real time legal advice in the midst of combat. As noted by General Martin Dempsey, Chairman of the US Joint Chiefs of Staff, "Israel went to extraordinary lengths to limit collateral damage and ensuing casualties. In fact, we sent a lessons learned team . . . to work with the IDF to get the lessons from the [Gaza operation]."[7] Colonel Kemp has issued similar sentiments: "No army in the world acts with as much discretion and great care as the IDF in order to minimize damage. The US and the UK are careful, but not as much as Israel."[8]

In addition to inventing legal standards and proffering claims without a factual foundation, NGOs also generally ignored Hamas and other terror organizations when analyzing the legality of military operations, as if, in the words of William Arkin, Israel was fighting some "nonexistent force." Alternatively, they tended to give Hamas the benefit of the doubt for its actions.

Amnesty International, for instance, claimed that Hamas told the civilian population to ignore IDF warnings of impending strikes because it was "motivated by a desire to avoid further panic." These claims are simply bizarre and must be viewed as promoting Hamas propaganda. Hamas is a terrorist organization that steals humanitarian aid; hides its leadership in hospitals; stores its rockets in schools, mosques, and private homes; and conducts military operations from within civilian areas placing them in extreme danger. It summarily executes collaborators and has intimidated and threatened the international press. Hamas and other Palestinian terror groups do not care about the safety of Palestinians in Gaza or preventing "panic."

Similarly, in a *New York Times* article discussing human shielding, an HRW researcher claimed that the legality of Hamas embedding in civilian areas is "a bit of a fluid concept . . . If you have any choice in the matter, you should not be fighting from an apartment building full of civilians."[9] Like Amnesty's comment, this is absurd. There is nothing

---

[6] Remarks made at November 12, 2014 address at the UN Library Geneva.
[7] http://www.ustream.tv/recorded/55011394
[8] http://www.jpost.com/Arab-Israeli-Conflict/Former-British-commander-in-Afghanistan-No-army-acts-with-as-much-discretion-as-IDF-does-374382
[9] http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html?_r=0

"fluid" about the illegality of Hamas' fighting tactics. They are prohibited under the laws of war because the terror organization is placing civilians at risk by co-locating, and also because Hamas attacks themselves are directed at Israeli civilians. Contrary to HRW's claim, there is no "choice" to engage in prohibited activity.

Brookings Institution scholar Ben Wittes summarizes the consequences of the NGO approach:

> In my view, we are talking about [asymmetric war] today not simply because of the barbarities of any groups but because of the reaction over time to the behavior of those groups by NGOs, international organizations, activist groups, and many members of the legal academy—for whom systematic violations of the law of armed conflict by insurgent groups is just not quite as troubling as is the reaction to those violations, often taken in rigorous compliance with the LOAC or in good faith attempts to comply, by organized state militaries, particularly those of the United States and Israel . . .
>
> To put it simply, the world has responded to the ever-increasing outrageousness of these [insurgent] groups with ever-increasing demands on their opponents—ironically, the most legally scrupulous militaries in the world—to achieve something close to perfection in civilian protection. The soft-law world is just not quite as horrified by Hamas as that group's behavior and the relevant IHL conventions would lead one to expect . . . The political pressures generated by the law, therefore, tend to militate in exactly the wrong direction. And that is not the fault of the terrorists. To assign blame on this point, rather, we must look to New York, to Geneva, to many European capitals, and to the fundraising strategies of human rights groups.[10]

[10] http://www.lawfareblog.com/2015/01/notes-on-the-erosion-of-norms-of-armed-conflict/#more-42607